

1984 S.C. Op. Atty. Gen. 332 (S.C.A.G.), 1984 S.C. Op. Atty. Gen. No. 84-137, 1984 WL 159943

Office of the Attorney General

State of South Carolina

Opinion No. 84-137

November 30, 1984

***1 Re: Retroactivity of Marchant v. Hamilton**

Major General T. Eston Marchant, SCARNG

Adjutant General

Rembert C. Dennis Office Building

1000 Assembly Street

Columbia, South Carolina 29201

Dear Eston:

You have requested this office's opinion on the following questions:

1. Whether the decision in [Marchant v. Hamilton, 309 S.E.2d 781 \(S.C. App. 1983\)](#) is to be applied retroactively?
2. What statute of limitations, if any, would apply to claims for back pay?
3. Whether Marchant v. Hamilton decided the issue of whether public employees who used their annual leave during military training in order to receive their full pay, because their employer would not pay full pay for military training, were entitled to restoration of their leave?

The Court's ruling in Marchant construed a statute which had been the law in this State since 1950. The decision did not overrule any precedent or make new law. Therefore, the opinion would be applied retroactively as well as prospectively. [State v. Southern Farm Bureau Life Ins. Co., 265 S.C. 402, 219 S.E.2d 80 \(1975\)](#).

It would appear that in most situations the applicable statute of limitations would be [Section 15-3-530\(2\), South Carolina Code of Laws \(1976\)](#), which provides for a six year limitation period for an action upon a liability created by statute other than a penalty. However, your attention is directed to [Section 15-3-560 of the Code](#) which provides for a one year limitation period for an action against a county with a population in excess of eighty-five thousand brought by an employee on any, claim for salary or wage alleged to be due. This provision may be applicable to a Guardman's claim against a county employer. Of course, the applicability of any statute of limitations would, in the final analysis, have to be made on a case-by-case basis since there are various equitable doctrines (waiver, estoppel, tolling, etc.) which may be asserted.

Finally, the Court of Appeals' decision in Marchant only addressed the issue of 'loss of pay;' the Court did not specifically address or even discuss restoration of leave when such leave was taken in order to receive full pay.

If I can be of further assistance to you in this matter, please do not hesitate to contact me. With kindest personal regards, I am
Very truly yours,

T. Travis Medlock

Attorney General

1984 S.C. Op. Atty. Gen. 332 (S.C.A.G.), 1984 S.C. Op. Atty. Gen. No. 84-137, 1984 WL 159943

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.